STATE OF MAINE
PUBLIC UTILITIES COMMISSION

March 17, 2003

Docket No. 2001-827

Public Utilities Commission,
Investigation of the Rate Design of
Community Service Telephone
Company

ORDER ON
RECONSIDERATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY AND BACKGROUND

On November 13, 2003, we issued an *Order Rejecting Stipulation* in this case. Community Service Telephone Company (CST) has requested the Commission to reconsider that decision. We have given further consideration to that order pursuant to arguments raised by CST, but decline to change it.

II. BACKGROUND; PROCEDURAL POSTURE

In the *Order Rejecting Stipulation*, we declined to approve a Stipulation filed by CST and the Public Advocate on September 18, 2002. The Stipulation addressed the levels of access rates and local exchange rates for CST. We rejected the Stipulation because it contained proposed rates that only partially addressed the requirements of 35-A M.R.S.A. § 7101-B (the "access parity statute") that would apply on May 30, 2003, and failed to address these rate design issues in a more comprehensive manner. In the *Order Rejecting Stipulation*, we ruled that the access parity statute required CST, on May 30, 2002, to reduce its intrastate access rates to the level of its interstate rates that were in effect at that time (most likely, rates that became effective in the summer of 2002). We further ruled that CST must reduce its intrastate access rates "as rapidly as possible" to the level of its interstate access rates that became effective in the summer of 2000.

We also rejected the portion of the Stipulation that proposed rate increases for business customers, that were smaller both absolutely and as percentages than those that it proposed for residential customers. We found that CST did not provide sufficient support for its argument that it faced competition from cellular carriers, particularly for business customers. We address CST's arguments on reconsideration briefly below.

On the same date as the *Order Rejecting Stipulation*, we commenced a Rulemaking that proposed amendments to Chapters 280 (Provision of Competitive Telecommunications Services) and 288 (Maine Universal Service Fund). *Public Utilities Commission, Proposed Amendments to Chapters 280, 285 and 288*, Docket No. 2002-

687, Notice of Rulemaking (November 13, 2003). The proposed amendments stated that all local exchange carriers must reduce intrastate access rates to the level of the carrier's interstate access rates on May 30, 2003 and every two years thereafter.

CST filed its request for reconsideration on December 3, 2002, pursuant to Chapter 110, § 1004 of the Commission's Rules (Practice and Procedure). The Hearing Examiner granted two extensions to CST to file a Supplemental Memorandum, which it filed on January 15, 2003. In an Order Extending Period for Reconsideration issued on December 23, the Hearing Examiner also suspended the effect of the portion of Chapter 110, § 1004 that states that if the Commission does not rule on a petition for reconsideration within 20 days after it is filed, it is denied.

The Order Extending Period also provided notice to CST that the same substantive issues the validity of our interpretation on the access parity statute that it had raised in its request for reconsideration would also be subject to consideration in the Rulemaking, where any ruling would necessarily apply to all carriers, not just to CST. The Order suggested that CST might want to file comments in the Rulemaking or at least find a means to incorporate the relevant portion of its supplemental memorandum. On January 23, 2003, CST filed a letter in the Rulemaking requesting the Commission to consider its supplemental memorandum in this case in the Rulemaking.

In the *Order Adopting Amendments to Rule*, issued today, we considered and rejected the substantive arguments made by CST.[1] We do not repeat our reasons for doing so here. CST argues there were procedural deficiencies in the course of considering the Stipulation and issuing the Order Rejecting Stipulation. We address those arguments in this Order.

III. DISCUSSION

A. The Access Parity Statute

Initially, CST states that the "Commission's disregard of Section 8(J) of Chapter 280 of its Rules and its attempt to derogate or change Section 8(J) by fiat in the Order Rejecting Stipulation violates the law governing administrative agencies." CST's argument is based on the factually incorrect premise that there is presently an existing, effective Section 8(J) in Chapter 280. CST's Supplemental Memorandum in several places implies, and in one place expressly states, that Section 8(J) is still in effect. As pointed out in the *Order Rejecting Stipulation* itself, Section 8(J) by its own terms

[1] We incorporate Part III.A of the *Order Adopting Amendments to Rule* in Docket No. 2002-687 into the Order in this case. It is attached as Appendix A.

applied only to access rate filings for 1999. It therefore has expired.[2] CST's arguments that rules such as 8(J) "have the force of law until they are amended or repealed" has no applicability to this case. No provision in Chapter 280 presents an impediment to the interpretation of the access parity statute that we made in the *Order Rejecting Stipulation*.

CST next claims a "failure to follow due process in altering [the] prior order." CST claims the Commission, prior to considering a change in an existing order (the *Interim Order,*[3] which applied to all rural LECs) did not comply with the requirements of 35-A M.R.S.A. § 1321.[4] CST also relies on a statement in *Mechanic Falls Water Co. v. Public Utilities Commission*, 381 A.2d 1080, 1103 (1977):

> Where, however, the Commission is contemplating a change in a long-standing policy which would adversely affect a utility, a general notice of a rate proceeding may not be sufficient. …In such circumstances, due process may require a more particularized notice so that the utility could introduce evidence on that issue if it so desires.

We did not provide specific notice to either party, following the filing of the September 18, 2002 Stipulation between the Company and the Public Advocate, that we would apply the "rate means rate" interpretation of the access parity statute to our consideration of the Stipulation.[5] Nevertheless, the *Notice of Investigation* provided specific and detailed notice that the "rate" interpretation would apply to this proceeding. The *Notice* stated that the subject matter was "the rate design of Community Service Telephone Company (CST), specifically the levels of its intrastate access rates and its local basic service rates." The *Notice* also stated:

---

[2] The language in the Rule, while it had by its own terms no continuing effect, could of course only be removed by a rulemaking. It has now been removed by the rulemaking in Docket No. 2002-687, described above, that amended Chapter 280.

[3] *Maine Public Utilities Commission, Investigation into Rates Pursuant to 35-A M.R.S.A. § 7101-B,* Docket Nos. 98-891 et al., Interim Order (Jan. 28, 1999).

[4] "The commission may at any time rescind, alter or amend any order it has made including an order fixing any rate or rates, tolls, charges or schedules of a public utility or an order relating to matters within the jurisdiction of the commission with respect to a competitive service provider only if it gives the public utility or competitive service provider and all parties to the original proceeding, to the extent practical, written notice and after opportunity for those parties to present evidence or argument, as determined appropriate by the commission. …." 35-A M.R.S.A. § 1321.

[5] The Stipulation addressed only a portion of the local and access rates issues that were the subject matter of this proceeding. That partial resolution, however, contained proposed implementation dates that were imminent.

> For some time, including prior to the filing and acceptance of the TDS and Mid-Maine stipulations, the Commission has indicated that it expected ITCs that receive what in effect amounts to universal service funding (through access charges that are higher than interstate rates) to increase their own local service rates to the levels of Verizon as a condition of either continued *de facto* USF funding or funding under the USF Rule. The TDS companies and Mid-Maine followed those indications and, in their stipulations, agreed to increase local service rates approximately half way to Verizon levels.
>
> Chapter 288 establishes as a formal Commission policy that any rural local exchange carrier that receives universal service funding (USF) must establish local service rates at least equal to those of Verizon. As conditions of receiving funding, the Rule requires a recipient of universal service funding (USF) to reduce its access rates to that company's interstate levels immediately and to increase its local service rates to Verizon levels for equivalent calling areas within three years after initial funding.
>
> * * * *
>
> As long as CST's access rates exceed its interstate access rates, it is receiving *de facto* universal service funding, albeit from IXCs only rather than from the broader base of carriers that will contribute under the USF Rule. CST should be aware that if it applies for USF support under the Rule, the Rule will require it to increase its basic rates as a condition of receiving funding. CST should also be aware that we do not intend to permit it (or any other rural LEC) to continue to receive *de facto* USF support (through intrastate access rates that exceed its interstate rates) if it fails to apply for USF under the Rule. Thus, *whether CST applies for USF or not, we will require it to reduce its access charges to its interstate levels, as indicated by the plain language of 35-A M.R.S.A. § 7101-B* (emphasis added). … By this Notice, we serve notice to CST and all other ITCs that presently have intrastate access rates that exceed those companies' interstate access rates that the "interim period" established by the *Interim Order* will terminate on the dates stated above.[6]

Notice of Investigation at 2.

CST cannot credibly claim that it did not receive notice, from the outset of this proceeding (and earlier), that the "plain language" interpretation of the access parity statute would be applied to CST. Even the *Interim Order* indicated that the option to use "disbursements" as the basis for setting intrastate access rates (if not the "disbursement" statutory interpretation) would not survive beyond the required 1999 access rate reduction. CST states that the Commission cannot "discard" the *Interim*

---

[6] These statements were similar to earlier statements in *Unitel, Proposed Rate Change*, Docket No. 2000-813, Order Rejecting Second Stipulation (October 1, 2001) at 5. We take administrative notice that counsel for CST is also counsel for Unitel.

Order without the notice for which it argues. The *Interim Order*, however, contained its own notice of "discard." It stated:

> Thus, our goal is to have ITC access rates at the NECA tariff rate by May 2001.
>
> * * *
>
> Given that Bell Atlantic's intrastate access rates will be at or below its interstate access rates by May 1999, we believe that the current access rate structure of the ITCs is neither economically beneficial nor equitable to the ITCs' access users. Further, maintaining this structure may retard the development of a competitive market in toll service throughout the state. Towns within the rural ITCs' service territories often have great need for economic development and could benefit from robust competition in the intrastate toll market. It is not in the long-term interest of those towns, their residents, or the Commission to forestall that development simply to maintain the ITCs' existing access rate structure.
>
> * * *
>
> We envision a two-year process [from January 28, 1999] of reducing ITC access rates from disbursement levels to NECA tariff levels.

Interim Order at 3, 4, 5.

The Commission provided more than ample notice that it would no longer allow rural ILECs to set intrastate access rates based on "disbursements." There may have been less notice that we would expressly disavow the "disbursements" interpretation, but we are at a loss to understand why there is a practical difference to CST.

We note that CST's claim that the *Order Rejecting Stipulation* made a "change in interpretation" of the access parity statute is somewhat misleading. We have always interpreted the phrase "intrastate access rates that are less than or equal to interstate access rates established by the Federal Communications Commission" to mean that intrastate "rates" must equal (or be less than) interstate "rates." The "disbursements" interpretation stated in Chapter 280, § 8(J), and explained in the *Interim Order,* was available only for the 1999 access rate filing.[7] The *Order Rejecting Stipulation* did not replace one statutory interpretation with another. Instead, it disavowed one of the theories, leaving the other. CST has never disputed the validity of the "rates" interpretation of the statute. It has only argued that its preferred reading is also legally justifiable.

---

[7] Section 8(J)(2)(d) stated:

> Local exchange companies shall file their 1999 proposed changes at least 120 days prior to May 30, 1999. This filing must contain access rates that mirror the structure and level of interstate access rates (or interstate NECA-pool disbursements).

CST states that "in addition to providing notice, the Commission is required to explain its reasons for the departure in detail. We refer CST to the Unitel *Order Rejecting Second Stipulation*; the *Notice of Investigation* and *Order Rejecting Stipulation* in this case; the *Notice of Rulemaking* in Docket No. 2002-687; and, finally (although issued subsequent to the *Order Rejecting Stipulation* in this case), the *Order Adopting Rule Amendments* in Docket No. 2002-687.

Finally, CST suggests that the process to which it claims it was entitled cannot be fully satisfied by considering its arguments on reconsideration, "after the Commission appears to have made its decision." CST was afforded ample opportunity to present its arguments both in its reconsideration motion and in the Rulemaking. It had notice of the Commission's views in the *NOI* in this case, but said nothing. The Rulemaking contained a *proposal* to amend Section 8 of Chapter 280 to state only the "rate" interpretation of 35-A M.R.S.A. § 7101-B. CST and others had ample opportunity to convince us otherwise in the Rulemaking. We considered each of CST's many substantive arguments in detail in the *Order Adopting Rule* and found them to be without merit.

B. Balance Between Business and Residential Rates

CST's motion also argues that the Commission acted unreasonably in rejecting its proposal to increase local business rates by a smaller amount (both absolutely and as percentages) than residential rates. CST points out that the Commission did not address in any detail its argument that the costs for providing business and residential services were similar. CST claims that the cost argument is its "first and primary" argument. CST did not provide any additional information about competition from cellular providers, information we said was lacking in its initial arguments in support of the Stipulation.

In two rate filings that CST has made since the rejection of the Stipulation ("Step 1" and "Step 2" of its plan intended to comply with the Order), it has maintained the ratio between business and residential rates (1.8:1) that existed prior to the Stipulation. CST has indicated to the Examiner in this case that it still wishes to pursue the matter. Obviously, if it pursues the matter during any rate changes in the near future, it will have to do so in "Step 3." While we do not change our prior Order, CST is free to make a proposal, and support that proposal, in its "Step 3" filing.[8] We note, however, that the ratio between business and residential rates is not an issue that is unique to CST, and we may determine that it is necessary to consider the issue in a manner or proceeding that has broader participation.

[8] Because of Legislative activity that might change the deadline for compliance with 35-A M.R.S.A. § 7101-B, it may become necessary to reconsider the timing mandates contained in the *Order Rejecting Stipulation*.

Accordingly, we

D E N Y

The request of Community Service Telephone Company to change the Order Rejecting Stipulation issued in this case on November 13, 2002.

Dated at Augusta, Maine, this 17th day of March, 2003.

BY ORDER OF THE COMMISSION

_____

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.